

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RICHARD BREWER, JEAN CAROL
LANE, TEXAS DIVISION SONS OF
CONFEDERATE VETERANS, INC.,
Plaintiffs

v.

RON NIRENBERG, ROBERTO TREVINO,
WILLIAM SHAW, REBECCA VIAGRAN,
REY SALDANA, SHIRLEY GONZALES,
GREG BROCKHOUSE, ANA
SANDOVAL, MANNY PALAEZ, JOHN
COURAGE, CLAYTON PERRY,
Defendants

5:17-CV-00837-DAE

**DEFENDANTS' MOTION TO EXTEND THE
DISPOSITIVE MOTION DEADLINE**

TO THE HONORABLE DAVID A. EZRA, UNITED STATES DISTRICT JUDGE:

NOW COMES Defendants, RON NIRENBERG, in his Official Capacity as Mayor of the City of San Antonio, and ROBERT TREVINO, WILLIAM SHAW, REBECCA VIAGRAN, REY SALDANA, SHIRLEY GONZALES, GREG BROCKHOUSE, ANA SANDOVAL, MANNY PALAEZ, and JOHN COURAGE, in their official capacities as Members of the San Antonio City Council (hereinafter "Defendants"), and file this their Unopposed Motion to Extend the Dispositive Motions Deadline in the above-styled lawsuit, and in support thereof would show unto the Court as follows:

1. Pursuant to a text order from the Court on January 31, 2018 the deadline for dispositive motions is July 9, 2018. (See Dkt. # 25).
2. Defendants respectfully request a seven (7) day extension of the deadline to file dispositive motions, to July 12, 2018.

3. Federal Rule of Civil Procedure 16(b)(4) provides that a scheduling order may be modified “for good cause and with the judge's consent.” The good cause standard requires the ‘party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party requesting the extension.’ ” *S & W Enters., L.L.C. v. SouthTrust Bank of Ala.*, NA,315 F.3d 533, 535 (5th Cir.2003) (quoting 6A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1522.1 (2d ed.1990)). In other words, the party who seeks to modify a scheduling order deadline must show that, despite acting diligently, it will still be unable to meet that deadline. *Rivera v. County of Willacy*, 2007 U.S. Dist. LEXIS 41401, at *2, 2007 WL 1655303, *1 (S.D.Tex. June 6, 2007).

4. In the last month, undersigned counsel has been involved in three separate emergency issues that have unexpectedly filled her time above and beyond standard case load—an Emergency Motion for Additional Security (*Hays Street Bridge Restoration Group, et. al. v City of San Antonio*, In the 288th District Judicial Court, Bexar County, Cause No. 2012-CI-19589), an Emergency Petition for Writ of Mandamus (*Working Texans for Paid Sick Leave v Leticia Vacek, Clerk for the City of San Antonio, in her Official Capacity*, In the Fourth Court of Appeals, Dk. #04-18-00403) and two temporary restraining orders in two related cases (*Mr. W Fireworks v City of San Antonio*, In the 57th District Court, Bexar County, Cause No. 2018-CI-12200, and *Alamo Fireworks v City of San Antonio*, In the 37th District Court, Bexar County, Cause No. 2018-CI-12271) Each of these matters took a considerable amount of time, both before and after their respective hearings/filing dates.

5. Additionally, Plaintiffs filed a Second Amended Complaint on June 22, 2018 which was substantially longer and more detailed than their previous live pleading. The Amended Complaint added at least one entirely new ground of recovery under Tex. Nat. Res.

Code Ann §191.001 *et seq.* (the Texas Antiquities Code) as well as new arguments. Counsel needs additional time to fully brief the issues raised in this new pleading.

6. The relief requested herein is for good cause and will not result in undue delay. No party will be prejudiced by the Court's granting of the requested extension. This matter is not yet set for trial.

7. Undersigned counsel hereby certifies that she has attempted to consult with counsel for Plaintiff regarding this matter. Counsel has indicated that they will agree to a 24 hour extension and then be willing to discuss this matter further. (Ex. A) Defendant respectfully requests a seven day extension to July 12, 2018.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request the Court GRANT Defendants' Motion to Extend the Dispositive Motions Deadline and extend the deadline to file dispositive motions for seven (7) days until July 16, 2018 and for such other and further relief as may be just.

Respectfully Submitted,

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filing to the following on July 9, 2018:

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